

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Federal-State Joint Board on
Universal Service

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CC Docket No. 96-45

**REPLY COMMENTS OF
THE MONTANA UNIVERSAL SERVICE TASK FORCE (MUST)**

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SUMMARY

The purpose of MUST's reply comments is to respond to several of the positions taken by other parties in this docket and to clarify MUST's own initial comments on voice grade access. Specifically, contrary to the comments made by several parties, competitive and technological neutrality should not be allowed to take precedence over the requirement that rates and services in rural and urban areas must be comparable. Moreover, concerns about the growth of the Universal Service Fund are misplaced and should not prevent the Commission from ensuring that Congress' universal service mandate is adequately supported. Finally, while MUST continues to support a modification of the definition of voice grade access, we would support an interim definition to accommodate carriers for whom the modified definition would cause undue financial hardship with respect to upgrading a small percentage of their lines.

INTRODUCTION

The Montana Universal Service Task Force (MUST) is a group of small, rural telecommunications companies in Montana¹ that are concerned about the preservation of true universal service in rural America. Made up primarily of telephone cooperatives and independent telephone companies, the members of MUST provide a full range of services supported by federal universal service funding as well as non-supported services. MUST's members provide wireline and wireless telecommunications services across rural Montana, including basic and advanced local and long distance wireline services, cellular and PCS services, dial-up and dedicated Internet access (including DSL service to more than 70 Montana

¹ The companies include Montana Independent Telecommunications Systems, Nemont Telephone Cooperative, Triangle Telephone Cooperative, Northern Telephone Cooperative, Blackfoot Telephone Cooperative, 3 Rivers Telephone Cooperative, Valley Telecommunications, Project Telephone Company, Clark Fork Communications, and Central Montana Communications.

communities with populations under 2000), and satellite-based services. The companies also provide interactive video conferencing to more than 75 studios across the state via an ATM backbone.

MUST's members have been providing high-quality telecommunications services to rural Montana since the late 1940s and early 1950s. Our subscribers rely on us to ensure that the services they receive are comparable in price and functionality to those enjoyed by urban subscribers. We, in turn, have relied for decades on support mechanisms such as the federal Universal Service Fund to enable us to provide access to basic local service.

In its initial comments MUST advocated the following changes to the definition of universal service: 1) Voice grade access should be modified from its current definition of 300Hz to 3000Hz to a new definition of 300Hz to 3500Hz; 2) Equal access should be added to the definition; 3) The FCC should add technical and service quality standards to the definition; 4) The FCC should clarify that states are free to add their own technical and service quality standards in determining eligibility for ETC designation; and 5) The definition should include unlimited local calling at the exchange level.

MUST also advocated that the Joint Board and the FCC not allow concerns regarding competitive and technological neutrality to drive the definition of universal service to a "lowest common denominator" of service in rural America. Since rural telephone companies across America already provide these services, the suggested modifications to the definition of universal service should not significantly increase the size of the federal Universal Service Fund. This is particularly true because MUST envisions that state Public Utility Commissions will determine whether the modified definition is being met during the ETC certification processes and virtually all current ETCs already meet MUST's proposed additional criteria.

I. THE PRIMARY GOAL OF THE DEFINITION OF UNIVERSAL SERVICE SHOULD BE TO ENSURE THAT SERVICE IN RURAL AREAS IS COMPARABLE IN PRICE AND QUALITY TO SERVICE IN URBAN AREAS.

A number of those filing initial comments in this proceeding cited competitive and technological neutrality as the primary goals of the definition of universal service. For example, the Competitive Universal Service Coalition stated that “the main problems with universal service policy are not deficiencies in the basic definition, but that it is not fully consistent with competitive entry.”² Indeed, said the Coalition, “... the Joint Board and the FCC should establish a more streamlined definition that focuses on basic connectivity ...”.³

The Cellular Telecommunications and Internet Association (“CTIA”) was admirably straightforward in its suggestion to the Joint Board: “The Joint Board should not expand the definition or take any action that would effectively exclude CMRS providers from eligibility for universal service support.”⁴ CTIA went on to state that “[a]dding ... services or functionalities to the definition, even if the services may be used by a substantial majority of residential customers, would have the effect of precluding many local service providers from offering supported universal service.”⁵ Clearly, CTIA is not in the least interested in comparability of service between urban and rural areas. A lower rural standard is acceptable to CTIA, so long as cellular providers are guaranteed ETC designation. In fact, CTIA’s position appears to be diametrically opposed to the plain language of the Telecommunications Act of 1996 (“Act”).⁶

² Comments of the Competitive Universal Service Coalition, page 3

³ Id.

⁴ Comments of the CTIA, page 1

⁵ Id. at page 5

⁶ SEE, 47 U.S.C. Section 254 (c) (1) (B)

AT&T Wireless' position was similar: "... expanding the definition of universal service would reduce the number of carriers eligible to offer supported services to consumers and thereby limit competition."⁷ The United States Cellular Corporation ("USCC") focused on technological neutrality: "Services should be added to the core service list only when it is technologically possible for all types of carriers – wireline and wireless – to offer the functionality of a new core service."⁸

The problem with these comments is that they appear to place more importance on competitive or technological neutrality than on whether the existing definition ensures that rural subscribers receive services comparable to those enjoyed by urban subscribers. Yet the latter concerns are precisely the reason our national universal service policy exists. Nowhere is there any mention of competitive or technological neutrality among the principles set forth in the Act to guide regulators in establishing universal service policy. One of the great merits of the universal service section of the Act is that it unambiguously sets forth the principles upon which universal service policy is to be based. Of particular importance are the following:

(1) QUALITY AND RATES.—Quality services should be available at just, reasonable, and affordable rates. ...

(3) ACCESS IN RURAL AND HIGH COST AREAS.--Consumers in all regions of the Nation ... should have access to telecommunications and information services ... that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.⁹

These principles require a definition of universal service that results in support for "quality" services in rural areas. Nowhere does the Act say that the quality of service should be the lowest

⁷ Comments of AT&T Wireless, page 4

⁸ Comments of USCC, page 3

common denominator of service that can be offered by the largest number of competitors or by the broadest range of competing technologies.

As MUST stated in its initial comments, the definition of universal service should be set at the highest possible level that is consistent with the service that has been deployed in most of rural America. In order to meet the principles set forth in the Act, the definition of universal service must require more than just two cans and a string (or two cans and no string in the case of wireless carriers). There must be technical and service quality standards that ensure the service is reliable and robust.

Unfortunately, the current definition of universal service, coupled with the FCC's decision to make universal service support portable based on the incumbent's costs rather than the competitor's costs creates no incentive for competitive providers to offer services that are reliable and robust. To the contrary, the incentive for such providers is to meet the bare minimum requirements of the FCC's current definition of universal service.

Incumbent providers are in many cases required to offer a much higher level of service by state statutes and regulations or by the terms of their loan agreements with entities such as the Rural Utilities Service. Where no such requirements exist, most incumbents offer a higher level of service based on industry custom and cooperative culture. Some of the most significant costs incurred by small incumbent telephone companies are for maintaining a trained professional staff to respond in a timely fashion to service outages, to answer billing and service questions, to inform customers about changes to rates and service offerings, and to keep accurate plant and consumer records to reduce or eliminate any degradation in service quality and ensure rapid troubleshooting. The current definition of universal service requires none of these things and yet competitors receive support based on the incumbent's costs of providing them.

⁹ 47 U.S.C. Section 254(b)

The Joint Board and the FCC should add technical and service quality standards to the current definition of universal service to ensure that ETCs that receive support from the federal fund are providing “quality” service. The Joint Board and the FCC should also clarify that states are free to impose their own technical and service quality standards as a prerequisite for eligible telecommunications carrier (ETC) designation. The purpose of such requirements would be to ensure that competitive carriers could not receive support absent a commitment to provide service that is at least equal in quality to the service provided by the incumbent ETC.

The failure of the current definition to impose such standards leaves the responsibility for imposing them, and more importantly for supporting them, to the states.¹⁰ In states with large urban areas over which the costs of state universal service funds can be more easily spread, this may not be much of a problem. In states like Montana where there are no metropolitan areas, requiring a state universal service fund to support quality universal service in rural areas is contrary to the responsibility imposed by Congress on the federal government through the Telecommunications Act.

II. CONCERNS ABOUT COST SHOULD NOT BE ALLOWED TO FRUSTRATE CONGRESS’ UNIVERSAL SERVICE MANDATE

A number of parties commented that the current definition of universal service should not be modified because of the potential for increasing the size of the federal universal service fund and thereby increasing the amounts recovered by contributing carriers from their customers. For example, Verizon Wireless stated that “The Board should ... preserve a

¹⁰ SEE 47 U.S.C. Section 254(f)

limited definition of universal service that ensures consumer access to basic services while maintaining the USF at a reasonable rate.”¹¹

SBC Communications echoed this sentiment, advocating “a conservatively defined list of core services that can accomplish the public policy goals of the Act and minimize the cost to ratepayers. Universal service should be provided only as a safety net for essential telecommunications services.”¹² Verizon concurred, stating “... the Commission should not adopt an expanded definition of universal service that would put new pressure on the funding mechanism.”¹³ Others expressed similar concerns.¹⁴

There are several problems with these positions. Nearly all of the parties noted above cited the recent and projected growth of the universal service fund as a basis for concern. Yet there was almost no mention of the fact that nearly all of the growth can be attributed to the creation of the schools and libraries fund, the creation of enhanced Lifeline and Link Up, and the movement of what were formerly implicit subsidies (i.e., interstate access charges) for large local exchange carriers into explicit universal service support. None of these has anything to do with the current review of supported services.

In considering the definition of universal service, it is misleading to cite the recent growth in the universal service fund as a reason not to modify the definition to properly meet subscriber expectations for basic services. For example, in its recent small company access reform order, the FCC continued the process of reducing interstate access charges and moving cost recovery to the explicit universal service fund. While the FCC’s action clearly increased the size of the Universal Service Fund, the increased funding obligation for

¹¹ Comments of Verizon Wireless, pages 5 & 6

¹² Comments of SBC Communications, page 5

¹³ Comments of Verizon, page 3

¹⁴ SEE, e.g., Comments of Ad Hoc Telecommunications Users Committee & Comments of Worldcom

interexchange carriers will be offset by reduced interstate access payments to local exchange carriers. For both large and small local exchange carriers, reduced access charge revenues will be offset by higher universal service fund support and reduced risk of competitive bypass. Complaints of undue growth in the universal service fund are disingenuous since contributors to the fund are benefiting as much as they are harmed by the move to explicit rather than implicit support mechanisms. More importantly, such debate clouds the central issue of whether universal service is sufficiently funded to accomplish the goal of the Act. That goal is to ensure comparable rates and services in urban and rural areas.

As noted above, SBC's comments in particular underscore the reason for concern in this regard: "Universal service support should be provided only as a safety net for essential telecommunications services."¹⁵ While such a view may serve to limit SBC's contributions to the universal service fund, it also happens to be completely inconsistent with the directive of Section 254 of the Telecommunications Act that requires a level of support necessary to make rates and services in rural and urban areas comparable.¹⁶ The Act does not state that comparable services in urban and rural areas are limited to "essential" services.

In the context of the growth of the Universal Service Fund, MUST is far more concerned with the fact that competitive ETCs are eligible for funding based on the incumbent's costs and that the funding mechanism for competitive ETCs is uncapped. It is now entirely possible for a wireline company and two wireless companies to be designated as ETCs in the same study area. A household may be served by all three companies (for example, if the house is served by a wireline carrier, Dad has cellular service from one provider, and Mom has cellular service from the other). All three companies will receive funding in the same

¹⁵ Comments of SBC, page 5

¹⁶ 47 U.S.C. Section 254 (2) (b) (3)

amount, based on the costs of the wireline incumbent. The growth of the universal service fund that may result from adding technical or service quality standards to the current definition is likely to be miniscule in comparison to the growth that could result from the designation of multiple ETCs in study areas across rural America.

The provision of adequate service by providers in rural areas is far more important than the designation of multiple ETCs under the guise of promoting competition and deploying alternative technologies. Reasonable expectations of quality service do not necessarily require growth in the Universal Service Fund. In fact, undue growth in the Fund is far less likely to occur where a state designates a single ETC that provides properly defined universal service than where a state designates multiple ETCs that provide the lowest common denominator of service. Moreover, the growth in the Universal Service Fund due to the designation of multiple ETCs providing service that falls short of customers' expectations is likely to make the fund a political target. This is inconsistent with the goals set forth in the Act.

As noted in MUST's initial comments, the appropriate analysis is first to determine the proper definition of universal service by reference to the principles set forth in the Telecommunications Act. Service and rates between rural and urban areas must be comparable. Comparable service should include comparable technical and service quality standards to ensure that service in rural areas is as robust and reliable as service in urban areas. Once the appropriate definition has been established, the Telecommunications Act then requires the Universal Service Fund to support service at that level.

The parties noted above appear to want to conduct the analysis in reverse. They want to determine how big the fund should be and then define universal service in a manner

consistent with that size. Such an analysis is inconsistent with Congress' universal service mandate as set forth in the Act.

III. THE VOICE GRADE ACCESS REQUIREMENTS OF THE CURRENT DEFINITION SHOULD BE MODIFIED TO ENSURE ADEQUATE BANDWIDTH IN RURAL AREAS.

In its initial comments, MUST advocated revising the current definition of voice grade access to ensure that rural subscribers have access to adequate bandwidth in comparison to that available in urban areas. The current definition of voice grade access is set forth as the frequency range from 300Hz to 3000Hz, or a required bandwidth of 2700Hz. MUST proposed leaving the lower frequency at 300Hz and moving the higher frequency from 3000Hz to 3500Hz, creating a required bandwidth of 3200Hz.

MUST remains committed to its proposed frequency range. However, a number of carriers have contacted MUST and indicated that such a range would create very expensive upgrade problems for a small percentage of their most remote lines. MUST continues to believe that 300Hz to 3500Hz is the appropriate standard for all lines. However, in consideration of the concerns of these carriers, MUST would support an interim definition that would require that 95% of the lines in an ETC's service area meet the 300Hz to 3500Hz definition, provided that the remaining 5% of the lines in the study area meet the FCC's current 300Hz to 3000Hz definition.

CONCLUSION

The Joint Board and the FCC should modify the current definition of universal service as suggested by MUST to ensure that subscribers' reasonable expectations of quality service are met. Such modifications are unlikely to result in any significant growth in the size of the fund because nearly all ETCs already meet MUST's proposed standards. Further, the Joint Board and the FCC should resist efforts to divert attention from the fundamental goals of universal service (comparable service at comparable rates) to tangential issues such as competition and technological neutrality.

RESPECTFULLY SUBMITTED, this 4th day of January 2002.

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